

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
FILE NO. 3:10-CV-664-RJC-DSC

MARY W. FOREMAN, Executrix of)
the Estate of WALTER THOMAS)
FOREMAN, JR.)
)
Plaintiff,)
)
v.)
)
CAMFIL FARR, INC.,)
)
Defendant.)
_____)

MEMORANDUM AND RECOMMENDATION

THIS MATTER is before the Court on Defendant's "Motion to Dismiss [the Complaint]" (document #3) filed December 30, 2010.

On January 5, 2011, Plaintiff filed an Amended Complaint (document #5). It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings are to be denied as moot. Accord Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001) (amended pleading renders original pleading of no effect); and Turner v. Kight, 192 F. Supp. 2d 391, 397 (D. Md. 2002) (denying as moot motion to dismiss original complaint on grounds that amended complaint superseded original complaint).

Therefore, since Plaintiff has filed a timely Amended Complaint which supersedes the original Complaint, the undersigned respectfully recommends that Defendant's Motion to Dismiss be denied as moot.

RECOMMENDATION

FOR THE FOREGOING REASONS, the undersigned respectfully recommends Defendant's "Motion to Dismiss [the Complaint]" (document #3) be **DENIED AS MOOT**.

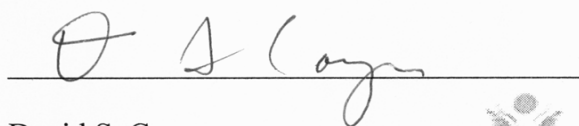
NOTICE OF APPEAL RIGHTS

The parties are hereby advised that, pursuant to 28 U.S.C. §636(b)(1)(c), written objections to the proposed findings of fact and conclusions of law and the recommendation contained in this Memorandum must be filed within fourteen (14) days after service of same. Failure to file objections to this Memorandum with the District Court constitutes a waiver of the right to de novo review by the District Judge. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005); Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir. 1997); Snyder v. Ridenour, 889 F.2d 1363, 1365 (4th Cir. 1989). Moreover, failure to file timely objections will also preclude the parties from raising such objections on appeal. Thomas v. Arn, 474 U.S. 140, 147 (1985); Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Wells, 109 F.3d at 201; Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk is directed to send copies of this Memorandum and Recommendation to counsel for the parties; and to the Honorable Robert J. Conrad, Jr.

SO RECOMMENDED AND ORDERED.

Signed: January 17, 2011


David S. Cayer
United States Magistrate Judge

